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IN THE

SUPREME COURT OF THE UNITED STATES

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NUMBER 698

HOWARD BRANKLIN CHAPMAN
Petitioner in Certiorari

vs.

UNITED STATES OF AMERICA

Petition for Certiorari to the United States Court of Appeals for the Fifth Circuit

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East Point, Georgia

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Now comes, Howard Branklin Chapman, petitioner in certiorari, and petitions this Honorable Court for the writ of certiorari to the United States Court of Appeals for the Fifth Circuit.

SUMMARY AND SHORT STATEMENT OF THE MATTER INVOLVED

Petitioner were indicted by the United States Grand Jury for the Northern District of Georgia, on a two count indictment. Count number 1, charged, "That, on

or about November 21, 1957, in the Atlanta Division of the Northern District of Georgia, HOWARD BRANKLIN CHAPMAN, did unlawfully, willfully and knowingly have and possess 21, 100-pound bags of sugar, and 20 pounds of yeast, the same being property intended for use in the manufacture and production of non-tax-paid distilled spirits, and being intended for use in violation of the Internal Revenue Laws with respect to such distilled spirits, in violation of Section 5686, Internal Revenue Code of 1954." Count two (2) charged petitioner "That, on or about November 26, 1957, in the Atlanta Division of the Northern District of Georgia, HOWARD BRANKLIN CHAPMAN, did unlawfully, willfully and knowingly have and possess 20, 100-pound bags of sugar, 20 pounds of yeast and 125 pounds of rye meal, the same being property intended for use in the manufacture and production of non-tax-paid distilled spirits, and being intended for use in violation of the Internal Revenue Laws with respect to such distilled spirits, in violation of Section 5686, Internal Revenue Code of 1954."

Petitioner was placed on trial before a jury.

The evidence on behalf of the government centered around a bakery located at 1146 Euclid Avenue, N. E., Atlanta, Georgia, and a house known as the residence of the defendant at 471 Page Avenue, N. E. Atlanta, Georgia.

In October, 1957, an investigation involving this defendant was begun by the Alcohol Tobacco Tax Unit.

One of the agents, namely, Charles H. Weems, Jr. called the Little Five Points Bakery and asked to purchase some sugar. Then on October 24, Mr. Weems went

to the Little Five Points Bakery and went inside and talked with Mr. Chapman, the petitioner, about buying some sugar.

On November 7, investigator Denny and Weems went back to the Bakery owned by Mr. Chapman, as President, and known as "Little Five Points Bakery, Inc." and again approached the petitioner Mr. Chapman, about some sugar.

Again on November 21, investigator Weems and Denny went back to the bakery to see Mr. Chapman, about the purchase of sugar. Later, approximately one week having elapsed investigator Denny and Weems went back to see Mr. Chapman, at his home, 471 Page Avenue, N. E. Atlanta, Georgia, in an attempt to purchase some sugar, and they continuousuly persisted, until they talked the petitioner into selling them some sugar, which was in the amount of 20 bags of 100-pounds each, making a total purchase of 2,000 pounds, which was actually not purchased from the defendant, but taken from him as evidence by agents, Denny, Weems, Scoggins and Strasser. Also at this time the agents took without the consent of the rightful owner, 20 pounds of yeast and 125 pounds of Rye Meal, according to what they term the items, by the agents, which could not have been anything other than pumpernickle flour, according to the petitioner.

All of the amounts stated were disputed by petitioner with the exception of the sugar.

The defendant pleaded entrapment during his entire trial and stated, that he had no intentions or knowledge of any one going to make liquor out of any of the mate-

rials, and that he had never sold any materials to bootleggers, or any other persons known to him to make non-tax-paid liquor from any of his materials, and the defendant put his character in issue to prove that he was a law abiding citizen and had not violated the law previously, and challanged the government to prove his bad character if any he had, which they failed to do.

At the conclusion of the evidence in chief on behalf of the Government, the defendant through his counsel moved for a judgment of acquittal, which the court (trial) did not rule upon, but took the same under advisement, and which said trial court did not rule on, up to and until the date of sentencing at which time said motions were overruled.

Also the Honorable John Stokes, Jr. Assistant United States Attorney General, made the statement to the court, that in view of the evidence, and the law as charged by the court, that he would not agree to it, but felt that the court should grant a judgment of acquittal, and this was refused by the trial court, and the court of Appeals for the Fifth Circuit stated, that the charge by the court was a fair charge.

When the jury returned its verdict of not-guilty on count one, and the verdict of guilty of count two, defense counsel immediately made a motion for judgment of acquittal notwithstanding the verdict, and as to this motion the trial Judge, took the same under advisement, and the same was not ruled on up to and until the day of sentencing, at which time the Court's attention was called to the Motions made, and the Court stated that it was overruling all of the motions, and at that time the trial Judge, placed your petitioner on probation.

JURISDICTION

(A) The judgment of the Court of Appeals was entered on November 10, 1959. A petition for rehearing was denied December 17, 1959. The jurisdiction of the Supreme Court of the United States is invoked under rules, as set forth, in the brief which accompanies this application for a Writ of Certiorari.

The United States Court of Appeals for the Fifth Circuit, in affirming the conviction of petitioner, ruled that "The question of entrapment was submitted to the jury upon a charge which was, in our opinion, a fair and clear statement of the law on the subject."

A petition for rehearing was filed by petitioner, and denied by the United States Court of Appeals.

(B) The statutes of the United States, the validity of which are involved in this application for certiorari, are as follows:

(a) Internal Revenue Code of 1954, Section 5686.

(b) This petition for certiorari is being filed in this court within 30 days from the date of the extension granted by Associate Justice Hugo L. Black, as provided for under the rules of the Supreme Court of the United States.

(c) The nature of the case and the rulings of the Court were such as to bring this case within the jurisdictional provisions relied upon, and the grounds upon which it is contended that the questions involved are substantial are as follows:

1.

The United States Court of Appeals for the Fifth Circuit has decided an important question of federal law which has not been, but should be, settled by this Court.

2.

The United States Court of Appeals for the Fifth Circuit has misconstrued a decision of this Court involving a construction of a statue of the United States, and has, by its ruling, permitted the conviction of a person, without correctly construing previous decisions of this court on the defense of entrapment, and the correct meaning as laid down by this court, to determine whether or not the defense of entrapment was involved in any case.

3.

The United States Court of Appeals for the Fifth Circuit has decided a question of gravity and importance in the administration of federal criminal justice involving, the question of entrapment, and the admissability of transcription of conversation between the officers, and the defendant, in the original trial, the petitioner in this matter. Also as to the admissibility of admissions made by petitioner to the officers, and as to how identify of a person to a telephone conversation may be made.

4.

The United States Court of Appeals for the Fifth Circuit has misconstrued the decision of this Court in the case of Weinstein vs. United States 293 F. 388, and by the decision in United States vs. 2265 One Gallon Paraffined Tin Cans etc., Cumby, Claimant, which is in itself, a 5 Circuit, 1958, reported 260 F. 2d 105. By making

a decision in the Cumby case, and then following the same in the case herein before the court, the Court of Appeals for the Fifth Circuit, has made errors, and has erred, which said rulings by the Fifth Circuit Court of Appeals, should be cleared up by this court.

THE QUESTIONS PRESENTED

1. The United States Court of Appeals for the Fifth Circuit erred in deciding that there was ample evidence upon which the jury could find appellant guilty of possessing the sugar, rye and yeast, and that this property was intended for use in violating the provisions of law quoted in the Internal Revenue Code of 1954, being Section 5686, where the evidence clearly shows that no one knew the mind of the petitioner in this case, and no evidence other than what the petitioner contends should not have been admitted namley the type transcription of conversations, shows that petitioner knew anything of what would happen to said sugar, or other materials, even though he was chartered by the Superior Court of Dekalb County, Georgia, to have the same in his possession and to sell the same.

2. The Court of Appeals erred in deciding and ruling that there were sufficient facts and circumstances to identify the petitioner as the person with whom the telephone conversation with Agent Kelley was had, when the record of the trial court, fails to bear out this contention whatsoever, when the same could easily be ascertained by reading of the record itself.

3. The Court of Appeals erred in deciding and ruling that every step in the making of the transcription was